

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

GOLDWELL OF NEW JERSEY, INC.

Plaintiff,

vs.

KPSS, INC.

Defendant

Civil Action No. 07-3919 (KSH)

OPINION AND ORDER

KATHARINE S. HAYDEN, U.S.D.J.

Plaintiff appeals Magistrate Judge Patty Shwartz's order dated June 6, 2008 (D.E. 77), arguing that her decision to deny an extension of expert report deadlines is essentially dispositive; that plaintiff needs to supplement its expert's report to provide an evaluation "carve-out"; and that because of the briefing schedule in effect for summary judgment motions, there is sufficient time for a supplemental report and deposition thereon. Plaintiff has also requested that the Court permit it to file a reply brief after issue was joined. (D.E. 81.) The Court addresses both matters.

The Court does not agree that Judge Shwartz's order is, or borders on being *de facto* dispositive. It is a standard discovery ruling that plaintiff disagrees with. The standard to apply in reviewing a magistrate judge's non-dispositive orders is "clearly erroneous or contrary to law." L. Civ. R. 71(c)(1)(A); Exxon Corp. v. Halcon Shipping Co., 156 F.R.D. 589, 591 (D.N.J. 1994) (Wolin, J.). Plaintiff has not made a showing that supports this standard. Judge Shwartz properly closed discovery so that a definite record exists for motion practice. Moreover, Judge Shwartz sensibly observed in her June 6th order denying supplemental opinion by plaintiff's expert that "the prejudice to plaintiff is minimal as the information about which the proposed expert opinion relates is factual information that is known to the plaintiff and about which it can testify without the assistance of an expert so long as the facts have been disclosed."

The Court affirms Judge Shwartz's June 6, 2008 ruling denying the plaintiff's request for an extension of discovery.

For the foregoing reasons,

It is on this 21st day of July, 2008

ORDERED that plaintiff's reply brief may be filed (D.E. 81); and it is further

ORDERED that plaintiff's appeal (D.E. 78) is **denied**.

/s/Katharine S. Hayden
Katharine S. Hayden
United States District Judge